

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 MARCUS HOOPER,) Case No. CV 09-07711 VAP
12 Plaintiff,) (CW)
13 v.)
14 LINDA SANDERS, WARDEN;) ORDER DISMISSING PETITION
M. VELASCO, CASE) FOR WRIT OF HABEAS CORPUS
15 MANAGER,) WITHOUT PREJUDICE
16 Defendants.)

Movant/Defendant Marcus Hooper ("Hooper") filed this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 ("Petition") on August 28, 2009, in the United States District Court for the Western District of New York ("New York District Court"). (Doc. No. 1.) Movant's Petition was transferred to this Court on October 23, 2009. (See Doc. No. 4.) He argues that the Bureau of Prisons ("BOP") has not given him proper credit for time served in custody, and seeks an order that he be released forthwith. (Pet. at 1-2.)

1 On February 11, 2010, the Government filed its motion
2 to dismiss urging dismissal because the BOP calculated
3 Movant's in-custody time properly, and because Movant
4 failed to exhaust his administrative remedies with the
5 BOP before filing suit. (Doc. No. 12 (Mot. Dismiss) at
6 1.) Movant did not file an opposition to the Motion to
7 Dismiss.

I. BACKGROUND

In 1989, Movant was charged with a violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 924(c). (Decl. of Bryan Erickson ("Erickson Decl." ¶ 6(a).) Movant pled guilty before the New York District Court to both counts, and on August 21, 1992, was sentenced to a total of 94 months imprisonment. (Erickson Decl., Ex. A. (J. & Commitment Order, Case No. 89 CR 000158-001-A).) There is no indication in the record before the Court that Movant filed a direct appeal from his conviction or sentence.

II. DISCUSSION

22 The Government first contends Movant's petition is
23 moot because on an unspecified date after Movant filed
24 his Petition, the BOP awarded him 573 days credit for
25 time spent in federal custody. (Erickson Decl., Ex. F at
26 4.) Given the sparsity of allegations in Movant's
27 Petition, it is unclear if the BOP awarded Movant credit

1 for the entire period for which he asserts credit is due.
2 The Court need not resolve this issue, however, as the
3 Petition should not have been brought in the first
4 instance.

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6 "Federal prisoners are required to exhaust their
7 federal administrative remedies prior to bringing a
8 petition for a writ of habeas corpus in federal court."
9 Martinez v. Roberts, 804 F.2d 570, 571 (9th Cir. 1986)
10 (per curiam) (collecting cases); see also Tucker v.
11 Carlson, 925 F.2d 330, 332 (9th Cir. 1991) ("Generally, a
12 federal prisoner is required to exhaust his federal
13 administrative remedies before filing a habeas
14 petition.").

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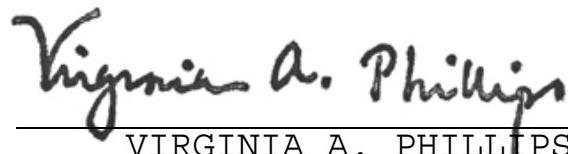
16 Here, even if Movant's petition is not moot, it is
17 improper because Movant has not exhausted the available
18 federal administrative remedies prior to bringing his
19 petition. On May 21, 2009, the BOP denied Movant's
20 request for an administrative remedy, but permitted
21 Movant to "submit an appeal on the appropriate form (BP-
22 10) to the Regional Director within twenty (20) days of
23 the date of this [denial]." (Pet., Ex. 1B.) Movant did
24 not appeal this response. (Decl. of Eliezer Ben-Shmuel ¶
25 4.) Accordingly, Movant has not exhausted his
26 administrative remedies.

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1 The Court therefore DISMISSES Movant's Petition
2 WITHOUT PREJUDICE.
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5 Dated: May 31, 2011



VIRGINIA A. PHILLIPS
United States District Judge

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